

December 23, 2019

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. C-2018-3004845
Chris Paluti v. West Penn Power Company
Reply Exceptions of West Penn Power

Dear Secretary Chiavetta:

Attached for filing is the Reply Exceptions of West Penn Power Company has to the Exceptions of Chris Paluti (Complainant).

A copy of the attached Reply Exceptions has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP


Margaret A. Morris

MAM/lam
Enclosure

cc: The Hon. Katrina L. Dunderdale, PA Public Utility Commission [w/encl.]
Office of Special Assistants, PA Public Utility Commission [w/encl.]
Teresa K. Harrold, Esquire, FirstEnergy Service Company [w/encl.]
Chris Paluti [w/encl.]

**Re: Docket No. C-2018-3004845
Chris Paluti v. West Penn Power Company
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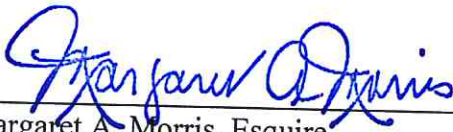
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via First Class Mail

Chris Paluti
205 Foley Road
Waynesburg, PA 15370

Dated: December 23, 2019



Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CHRIS PALUTI

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3004845

**REPLIES TO COMPLAINANT'S EXCEPTIONS
ON BEHALF OF PENNSYLVANIA ELECTRIC COMPANY**

Margaret A. Morris, Esq.
REGER RIZZO & DARNALL LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Dated: December 23, 2019

Counsel for Pennsylvania Electric Company

I. Introduction

In accordance with the Commission's directive and Section 5.535 of the Commission's Regulation, 52 Pa. Code § 5.535, West Penn Power Company (West Penn or the Company) submits its Reply to the Exceptions of Chris Paluti (Complainant) which support the adoption of the Initial Decision (ID) of Administrative Law Judge Katrina Dunderdale (Judge Dunderdale). The Commission should deny the Exceptions, affirm the ID in its entirety and dismiss the Formal Complaint. The findings of facts and conclusions of law set forth in the well-reasoned ID are based on the record evidence and sustain the dismissal of the Formal Complaint.

II. Procedural Background

On September 4, 2018, the Complainant filed the instant Formal Complaint alleging a reliability or quality problem with the electric service West Penn provided to his residence. On October 11, 2018, West Penn filed an Answer denying the material averments contained in the Complaint and specifically provided details regarding the interruptions of service that were outside the Company's control.

The telephonic hearing was held on July 19, 2019. The Complainant offered testimony but sponsored no exhibits. The Company offered testimony and sponsored twelve exhibits which were admitted into the record. The record was closed August 26, 2019.

The ID was issued on November 21, 2019. Judge Dunderdale dismissed the Complaint concluding that the Complainant failed to meet his burden of proof that the Company provided unreliable utility service in violation of the Public Utility Code (Code), a Commission regulation or a Commission order. 66 Pa.C.S. § 332(a).¹ Exceptions were due December 11, 2019 and Reply Exceptions due December 23, 2019.

On December 12, 2019, the Complainant Exceptions were filed. The Company notes that the Complainant's Exceptions, dated December 10, 2019, were not timely filed. The

¹ ID at 12.

Complainant simply states “twenty (20) days to respond to this decision is to [sic] short, especially during the holidays. I lost three days in its delivery.”

III. Initial Decision

As Judge Dunderdale recognized in her well reasoned ID, the Complainant has not met the burden of proving that West Penn violated the Commission’s regulations by failing to provide reasonable and adequate service.² Specifically Judge Dunderdale found:

In light of the credible evidence provided by West Penn about the actions it takes in its maintenance program and in response to the complaint calls from Complainant, the contrary evidence presented by Mr. Paluti was not sufficient to support a determination that West Penn provided inadequate, inefficient, unsafe, or unreasonable electric service and facilities. Thus, Mr. Paluti did not meet his burden of proof. Upon a review of the evidence in the instant case, Complainant did not establish by a preponderance of the evidence that Respondent provided inadequate or unreasonable service. However, Complainant did establish that the number of electric interruptions experienced at the service address, with approximately 29 interruptions in a 15-month period, does create a cause for concern. Although Respondent’s actions to date have been reasonable, West Penn is encouraged to work with Mr. Paluti on addressing outage and reclosure complaints, especially if the number of interruptions continues unabated. Mr. Paluti is encouraged to contact West Penn each time he notes an interruption so West Penn has an opportunity to address his concern and, hopefully, to reduce the interruptions experienced on this circuit.

ID at 12.

IV. Replies to Exceptions

The Complainant alleges that the Company never proved that the outages were from off-corridor trees and it did not remedy the situation until after he filed his Formal Complaint. Exception 1. Judge Dunderdale properly found, based on the record evidence, that the Complainant did not refute West Penn’s evidence regarding its maintenance program and the Company’s efforts to locate the causes for the interruptions and to correct the damage. The

² *ID* at 11-12.

record evidence reflects that as a result of the instances of off-corridor trees impacting the Company's facilities during the period July 31, 2018 through September 7, 2018, West Penn mitigated those priority trees along the corridor. West Penn witness Capitoni testified that off right-of-way trees, which were dying, dead, diseased, leaning, significantly encroaching or structurally unsound presenting a potential interference with transmission facilities, were removed in September 2018. The record evidence reflects that 6,204 trees along the 9 miles of circuit that serves the Complainant were removed in September 2018 to improve reliability before the next vegetation maintenance cycle. *See*, testimony of Dominic Capitoni. The Complainant offered no testimony to refute the Company's evidence. His evidence consisted solely of unsupported assertions and personal opinion which no matter how strongly held, does not constitute evidence sufficient to refute the Company's evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Exception 1 should be denied.

The Complainant re-argues his position that "power flickers" are not a result of normal recloser events because they were occurring "during calm, sunny weather." Exception 2. The Complainant does not explain why Judge Dunderdale's determination on this issue was in error. The record evidence reflects that the Eaton Cooper Recloser utilized by the Company operated as intended by the manufacturer. Inclement weather is not a factor and the reclosures operates when anything touches the line. West Penn Exhibit No. 20. *See*, testimony of Dominic Capitoni. Exception 2 should be denied.

The Complainant alleges he requested, and was denied, circuit drawing and maintenance records. Exception 3. He also alleges the Company refused to install "lightning protection on the the pole" that serves him. Exception 4. The record evidence reflects that the Company responded to the Complainant's specific informal discovery request for information. West Penn Exhibit 10. The allegation that the Company did not provide the alleged requested information for circuit drawings and the issues of installation of a lightning arrestor were not raised at hearing.

Exceptions 3 and 4 raise additional issues/argument for the first time. As the Commission has previously recognized, a *pro se* litigant is not absolved of complying with

procedural rules.³ In *Blauhut v. PECO Energy Co.*,⁴ the Commission recognized that a *pro se* litigant whose exceptions were based on evidence not of record and additional argument were not a basis for exceptions under Section 5.533 of the Commission's regulations and could not be considered. The same result should occur here; the Complainant's Exceptions 3 and 4, raising issues outside the scope of the proceeding, should not be considered by the Commission.

In Exception 5, the Complainant disagrees with Judge Dunderdale's finding that that he did not provide "sufficient information" to carry his burden of proof. The record evidence reflects that West Penn submitted evidence of co-equal value or weight to refute Complainant's *prima facie* evidence. However, his assertions, personal opinions or perceptions regarding West Penn's service did not constitute evidence sufficient to carry his burden of proof that West Penn violated the Code.⁵ Exception 5 should be denied.

V. Conclusion

The Exceptions, either raising irrelevant points or repeating positions that Judge Dunderdale soundly rejected based on the record evidence, are without merit. The substantial record evidence shows that the Complainant failed to carry his burden of proof that West Penn violated the Code, Commission regulation or order. The findings of facts and conclusions of law in the ID are based on substantial record evidence.

³ *Tremayne Shanault Lewis v. PECO Energy Co.*, Docket No. C-2010-2189187 (Order entered May 4, 2011).

⁴ *Adolf H. Blauhut v. PECO Energy Co.*, Docket No. C-2009-2087552 (Order entered January 29, 2010).

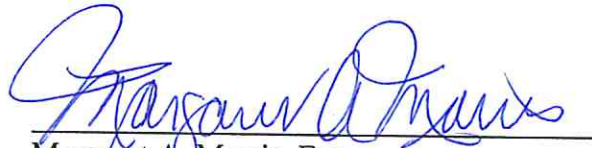
⁵ *Morrissesey v. Pa. Dept. of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm'n.*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

For the reasons set forth in these Replies to Exceptions, West Penn Power Company respectfully requests that the Commission adopt the Initial Decision of the Honorable Katrina L. Dunderdale without modification and dismiss the Formal Complaint of Chris Paluti.

Respectfully submitted,

Reger Rizzo & Darnall LLP

Dated: December 23, 2019



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